

REMARKS

Claims 43-46 and 59-64 were and remain pending in the application. By this paper, no claims have been amended. Reconsideration and withdrawal of the rejections are hereby respectfully solicited in view of the following remarks and the attached Declaration of Daniel J. Brunick under 37 C.F.R. §1.131.

Claim Rejections - 35 U.S.C. §102(e)

Claims 43-46 and 59-64 have been rejected under 35 U.S.C. §102(e) as anticipated by Stewart, III et al., U.S. Published Application No. 2004/0124688 (Stewart). The rejection of all of the pending claims should be withdrawn in view of the following remarks and the attached 37 C.F.R. §1.131 declaration of one of the joint inventors of this application, Mr. Daniel J. Brunick.

Stewart Reference

Stewart published on July 1, 2004. This publication date is well after the October 2, 2003 filing date for the instant application, and is also well after the February 11, 2002 filing date of this application's parent application Serial No. 10/072,601. However, the earliest U.S. filing date of Stewart is December 21, 2001, which is earlier than the filing dates of either the instant application or its parent case. This makes December 21, 2001 the critical date, i.e., the effective prior art date of Stewart. Thus, 35 U.S.C. §102(e) is properly applicable.

The rejection of claims 43-46 and 59-64 based on Stewart should be withdrawn due to an earlier date of invention and reduction to practice by the inventors of the instant application of the relevant subject of Stewart that is the basis of the rejection. According to the attached declaration of Mr. Daniel J. Brunick, one of the joint inventors of the instant application, he had possession of the invention at least before the December 21, 2001 filing date of Stewart. The declaration establishes that Mr. Brunick indeed had possession of the seat base and armrest configuration as disclosed in Stewart and before the effective filing date of Stewart. Particularly, the declaration of Mr. Brunick includes several attachments in the form of CAD images. These images show a seat base and armrest configuration that was in possession of the inventors prior to December 21, 2001. Based on Mr. Brunick's declaration, the height adjustable armrest configuration disclosed in Stewart was clearly in the possession of the inventors of the instant application prior to the critical date of Stewart.

The Stewart reference clearly does not show a car seat or child seat configured to be placed on a vehicle seat. Nor does it show a car seat that has a lap belt path created by any part of the seat base. Stewart does disclose a seat with a seat bottom, receivers or tubes on the sides of the seat bottom, and armrests with smaller diameter tubes or connector portions that slide into the larger tubes or receivers on the seat bottom. A plurality of vertically aligned holes is provided in each of the receiver tubes of the seat bottom. The holes can be selected and are configured to receive a resilient or biased protrusion on each of the connector tubes of the armrests to vertically position and adjust the armrests relative to the seat bottom.

Mr. Brunick's declaration demonstrates that he had possession of the seat bottom and vertically adjustable armrest configuration taught by Stewart. Mr. Brunick has shown that, at least as early as December 20, 2001, he had conceived of and reduced to practice a seat base with vertical receivers and armrests with vertical connectors that slide into the receivers. Mr. Brunick has also demonstrated that, at least as early as December 20, 2001, he had conceived of and reduced to practice a plurality of selectable, vertically spaced holes or slots in the receiver tubes of the seat base. He has also demonstrated that, at least as early as December 20, 2001, he had conceived of and had reduced to practice providing a resilient protrusion on the armrest connectors that are received in selected ones of holes or slots in the receivers to vertically adjust and position the armrest relative to the seating surface of the base.

Thus, Mr. Brunick has demonstrated that, at least before the effective prior art date of Stewart, he had possession of all of the relevant teachings of Stewart relied upon in rejecting the claims. For at least this reason, Stewart is not properly cited as prior art in rejecting claims 43-46 and 59-64 of the instant application. The rejection should be withdrawn at least on this basis.

Claims 43-45

The rejection of claims 43-46 and 59-64 should also be withdrawn because, prior to the December 21, 2001 effective date of Stewart, the inventors conceived of and reduced to practice the subject matter recited in the claims of the instant application. The declaration establishes that Mr. Brunick indeed had possession of the invention as claimed prior to the effective date of Stewart.

To illustrate, independent claim 43 recites a base with a seating surface and an armrest that is connected to the base on the side of the seating surface and that is positioned on the side

of the seating surface. Claim 43 also recites the armrest as being adjustable along a straight line between a first height position and a second height position relative to the seating surface. The CAD images attached to Mr. Brunick's declaration and his words clearly indicate that he had possession of such a base and height-adjustable armrest configuration at least prior to the December 21, 2001 effective date of Stewart.

Claim 43 also recites the armrest as including a connecting portion that slidably fits into a corresponding receiving portion of the base. The armrest shown and described in the Mr. Brunick's declaration clearly has a connecting portion of the armrest that slides into a receiving portion. Claim 43 also recites that the receiving portion has a slot for receiving a tab located on the connecting portion of the armrest. Again, Mr. Brunick's declaration clearly shows and describes slots or holes in the receiving portion and tabs, protrusions, or buttons on the connecting portion that are received in the slots or holes. Claim 43 further recites a belt path configured to receive and locate a lap belt of a restraint system of a vehicle. Mr. Brunick's declaration shows and describes an angled surface below the armrest that positions and locates a lap belt of the car seat to create a lap belt path. Lastly, claim 43 recites that the child seat is configured for placement on a seat of a vehicle. According to Mr. Brunick's declaration, the base and armrest configuration shown in Exhibit B are for a child seat to be used in a vehicle and placed on a seat of a vehicle.

As a result, Mr. Brunick had possession of the invention recited in independent claim 43 before the effective prior art date of Stewart. Thus, Stewart is not properly used as a prior art reference in rejecting claim 43 or its corresponding dependent claims 44 and 45. The rejection of these claims should be withdrawn for at least his additional reason.

Claim 46

Independent claim 46 recites a child seat for placement on a vehicle seat, a base and seating surface, a height adjustable armrest configuration that slides into a receiving part of the base, and a lap belt path that are essentially the same as that recited in claim 43. Claim 46 differs from claim 43 in that the connecting portion of the armrest is said to include a push button, not a tab, and that the push button engages one of a plurality of holes, not slots, on the seat base. The slots shown and described in Mr. Brunick's declaration are clearly holes or openings in the receiving portion of the seat base. The three protrusions shown and described in Mr. Brunick's

declaration on the connecting portion of the armrest are also clearly buttons, or together form a button, that can and must be pushed to adjust the armrest height.

Thus, Mr. Brunick has demonstrated possession of the invention recited in claim 46 before the effective prior art date of Stewart. Stewart is not properly used as a prior art reference in rejecting claim 46. The rejection of this claim should be withdrawn for at least this additional reason.

Claims 59 and 63

Independent claim 59 recites a child seat for placement on a vehicle seat, a base with a seating surface, and an armrest connected to the side of the base that are essentially the same as those recited in claims 43 and 46. Claim 59 differs slightly from claims 43 and 46 in that the armrest is said to be adjustable in a straight line and that a majority of its vertical movement is toward and away from the seating surface. Clearly, possession of the armrest movement toward and away from the seating surface in a straight line is also demonstrated in Mr. Brunick's declaration.

Claim 59 also differs from the previous claims in that: the connecting portion of the armrest is said to slidably fit *over* (not into) a corresponding receiving portion of the base; the protrusions are included on the receiving portion of the base (not on the armrest connector); and *the holes are included on the armrest* (not on the receiving portion of the base) for receiving the protrusions on the base receiving portion. This arrangement amounts to a mere reversal of parts from the arrangements recited in claims 43 and 46. The locations of the holes and protrusions on the armrest and base have been swapped or reversed in claim 59. Also, the male and female sliding "connectors" and "receivers" of the armrest arrangement have been reversed in claim 59. This is a simple design choice. Mr. Brunick's declaration has demonstrated that he had possession of the part orientations that are a reverse of those recited in claim 59. Thus, he had possession of the invention recited in claim 59 as well.

Additionally or alternatively, Stewart also fails to disclose or suggest this reverse component arrangements recited in claim 59. As a result, Mr. Brunick has shown that, prior to the effective prior art date of Stewart, he had possession of at least the same armrest configuration and arrangement that is disclosed in the Stewart reference.

For each of the above reasons, Stewart is not properly cited as prior art in rejecting claim 59 and its corresponding dependent claim 63. The rejection of these claims should be withdrawn for at least these additional reasons.

Claim 60

Independent claim 60 also recites a child seat for placement on a vehicle seat, a base with a seating surface, an armrest connected to the base on a side of the seating surface, and that the armrest is adjustable along a straight line in a vertical direction. These limitations were in the possession of Mr. Brunick before the December 21, 2001 effective prior art date of Stewart as demonstrated by his declaration and as discussed above with respect to claims 43, 46, and 59.

Claim 60 differs from the previous claims in that it recites armrest movement as being generally perpendicular to the seating surface of the base. The first CAD image, for example, that is attached to Mr. Brunick's declaration clearly shows that armrest movement would in fact be generally perpendicular to the seating surface of the base. Claim 60 is also different from the previous noted independent claims in that it recites a *tab on the armrest*, not more specifically on the armrest's connecting portion, and that it recites the *tab as fitting into a receiving portion of the base*, not more specifically into holes or slots in the base's receiving portion. Thus, claim 60 merely recites slightly broader coverage for the location of a tab on the armrest and the location of a complementary portion of the base into which the tab fits. Mr. Brunick's declaration has demonstrated possession of the slightly narrower location of the tab and slot noted with regard to the above claims 43 and 46. Thus, the declaration has demonstrated possession of the slightly broader tab and receiver portion configuration recited in claim 60.

Thus, Mr. Brunick has demonstrated possession of the invention recited in claim 60 before the effective prior art date of Stewart. Stewart is not properly used as a prior art reference in rejecting claim 60. The rejection of this claim should be withdrawn for at least this additional reason.

Claim 61

Independent claim 61 also recites a child seat for placement on a vehicle seat, a base with a seating surface, a lap belt path, an armrest on a side of the base, and that the armrest is vertically adjustable, similar to previously discussed claims 43 and 46. Claim 61 differs from

these previously noted claims in that the movement of the armrest is defined as being upward or downward relative to the seating surface. This upward and downward armrest movement is depicted and described in Mr. Brunick's declaration, and thus was in his possession along with all of the above other limitations of claim 61 before the effective prior art date of Stewart. Claim 61 also recites, similar to claim 59, that the armrest is movable *over* a receiving portion of the base and that *the receiving portion of the base*, not the armrest or its connector portion, includes the flexible tab and protrusions. For the same reasons set forth above with respect to claim 59, Mr. Brunick has demonstrated possession of this reversal of parts arrangement also recited in claim 61. Thus, for the same reasons that the rejection should be withdrawn relative to claim 59, the rejection of claim 61 based on Stewart should also be withdrawn.

Claims 62 and 64

Independent claim 62 also recites a child seat for placement on a vehicle seat, a base with a seating surface, an armrest on the side of the base and seating surface, and that the armrest is adjustable between two positions, similar to many of the previously discussed claims. Claim 62 differs from previously discussed claims in that the armrest movement is disclosed as being substantially toward and away from the seating surface. Mr. Brunick has demonstrated by his declaration that he had possession of such armrest movement prior to the effective prior art date of Stewart. Similar to claims 59 and 61, claim 62 also recites a reverse orientation of the armrest connecting portion, as it is said to fit *over* a receiving portion on the base. Claim 62 also recites that the receiving portion has the flexible tab with a protrusion on the tab and first and second slots on the connecting portion of the armrest to receive the protrusion that correspond to the first and second positions. This protrusion, tab, and slot arrangement is again simply a reversal of the parts discussed above with respect to claims 59 and 61. Thus, for the same reasons that the rejection should be withdrawn relative to claims 59 and 61, the rejection of claims 62 and 64 based on Stewart should also be withdrawn.

Essentially, Mr. Brunick's declaration and Exhibits A and B attached thereto demonstrate that the inventors had possession of the invention as claimed in the instant application. His declaration and the exhibits also demonstrate that the inventors had possession of the armrest structure at least to the degree disclosed in the Stewart publication and relied upon in rejecting the claims of the instant application. Further, Mr. Brunick has demonstrated that he had

possession of the invention earlier than the December 21, 2001 critical filing date of Stewart. As a result, Stewart is not appropriately used as prior art in rejecting the claims pending in the application. The rejection of claims 43-46 and 59-64 should be withdrawn for all of the foregoing reasons.


CONCLUSION

Claims 43-46 and 59-64 are believed to be in condition for allowance in view of the foregoing remarks and the attached declaration of Mr. Daniel J. Brunick. Reconsideration and withdrawal of the rejections and allowance of these claims is respectfully solicited.

The examiner is invited to contact the undersigned at the telephone number listed below in order to discuss any remaining issues or matters of form that will place this case in condition for allowance.

A request for a two-month extension of time and a RCE accompany this paper. The appropriate RCE and extension fees also accompany this paper.

Respectfully submitted,


Bryan J. Lempia
Reg. No. 39,746
Lempia Forman LLC
223 W. Jackson Blvd.
Suite 620, Brooks Bldg.
Chicago, Illinois 60606
(312) 291-0860

January 24, 2007